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STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS

Written statement submitted by Human Rights Watch, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[6 March 1997]

GE.97-11046 (E)

Hong Kong

1. Human Rights Watch is very concerned about the status of the International Covenant on Civil and Political Rights (ICCPR) in Hong Kong after 1 July 1997, when the British colony formally becomes a Special Administrative Region (SAR) of China. The 1984 Sino-British Joint Declaration stipulated that the protections of the ICCPR would continue to extend to Hong Kong after 1997, even though China is not a party to it. Subsequently, however, China indicated that even though it intends to honour some 200 international treaties, it would exclude specifically the ICCPR and would not report to the Human Rights Committee on how the provisions of the treaty were being respected in Hong Kong.

2. Human Rights Watch is also alarmed by the fact that on 22 February 1997, the Standing Committee of the National People's Congress, the Chinese parliament, adopted a decision to abolish or amend 24 Hong Kong laws effective 1 July, including key sections of the territory's Bill of Rights. (The Hong Kong Legislative Council adopted the Bill of Rights in 1991 in an effort to ensure that the provisions of the ICCPR remain in force after the reversion to Chinese sovereignty.)

3. Human Rights Watch is concerned that the Government of China has already begun to violate provisions of the ICCPR even before the Special Administrative Region comes into being. The best-known example is China's decision to disband the elected Legislative Council on 1 July and appoint a provisional legislature - which is already functioning - in its place, a clear violation of article 25 of the ICCPR which states that every citizen should be able to take part in public affairs through freely chosen representatives.

4. The right to freedom of expression is also in jeopardy. Chinese officials have announced that certain topics will be off limits for public discussion in Hong Kong after 1 July, such as Taiwan or Tibetan independence. All the media in Hong Kong have been banned from covering discussions of the Preparatory Committee, the 150-person body handpicked by China to guide the reversion process. Hong Kong-based journalists have been arrested and detained while covering events in China.

5. The extent to which freedom of association is respected after 1 July will need strict monitoring. Human Rights Watch/Asia shares the concern of many local, regional and international non-governmental organizations regarding the application of article 23 of the Basic Law, the document that will serve as the SAR constitution. This article, which concerns the prohibition of "any act of treason, secession, sedition, [and] subversion against the Central People's Government, or the theft of State secrets" is widely regarded as the vehicle by which groups or individuals may encounter restrictions or persecution for exercising their civil and political rights in post-1997 Hong Kong.

6. We call on the Commission to encourage the United Kingdom to publicly declare its intention of regarding China's failure to report to the United Nations Human Rights Committee on the application of the ICCPR in Hong Kong as a violation of its treaty obligation under the 1984 Joint Declaration and to consider the establishment of a provisional legislature as

a violation of article 25 of the ICCPR and a breach of the Joint Declaration. The Commission should also urge the Government of the United Kingdom to establish an independent human rights commission in Hong Kong before the transfer of sovereignty to receive complaints regarding human rights abuses, to promote human rights awareness and education, and to monitor the state of human rights in Hong Kong.

7. We call on the Commission to urge the Government of China to ratify the ICCPR and the International Covenant on Economic, Social and Cultural Rights and to respect fully the provisions of both Covenants in Hong Kong after 1 July.

Peru

8. The Human Rights Committee considered Peru in 1996 and in its observations in July, and again, in November, expressed serious concerns about numerous violations of the International Covenant on Civil and Political Rights (ICCPR) in that country. Human Rights Watch wishes to highlight a few areas of violation of particular concern to our organization.

9. Impunity for human rights violators and the systematic denial of due process for those tried by so-called faceless courts in Peru violate Peru's international obligations under ICCPR and other international treaties.

10. While State agents responsible for torture, forced disappearance and extrajudicial execution are protected from prosecution by a sweeping 1995 amnesty law, civilians accused of crimes against the State face the almost complete denial of due process guarantees in the faceless court system created by Peru's 1992 anti-terrorist decrees. The use of faceless courts, both in military and civilian trials, violates the right to a fair and public hearing by a competent, independent and impartial tribunal, as guaranteed by article 14 of the ICCPR. Faceless court proceedings are conducted in secret by judges and prosecutors whose identity is never revealed, making it impossible to guarantee their independence and impartiality. Terrorism cases are tried by civilian faceless courts, whereas treason cases, considered to be an aggravated form of terrorism, are tried by military faceless courts. In its Preliminary Observations on the report submitted by Peru under article 40 of the ICCPR, the Human Rights Committee found that the use of military courts to try civilians may in itself violate article 14, as persons accused of treason are being tried by the same military force that detained and charged them. We concur with the Committee that Peru should abolish the use of faceless courts without further delay.

11. Peru's use of catch-all definitions of terrorism also conflicts with its obligations under the ICCPR. As the Committee stated in its Preliminary Observations, Peru's domestic legislation contains a very broad definition of terrorism under which innocent persons have been and remain detained. Peru's facilitation of arbitrary detention violates article 9, which guarantees the right to liberty and security of person. Because it also criminalizes non-violent acts, such as "apologia del terrorismo" (excusing the acts of terrorists) which may involve acts of expression or thought, Peru's anti-terrorist decrees law also violate the right to freedom of expression, provided for in article 19.

12. Peru's anti-terrorist laws have contributed to the institutionalization of torture. The police are given the power to impose incommunicado detention and are required only to inform the judge about the measure. The high incidence of torture reported to have occurred during such police detention illustrates that incommunicado detention should be the exception, not the rule. The Human Rights Committee, like Human Rights Watch and the Special Rapporteur on the question of torture, determined that incommunicado detention is conducive to torture and that this practice should be avoided. We urge that in those exceptional circumstances when incommunicado detention is imposed, judges, rather than the police, determine the circumstances in which detainees are held incommunicado, and that they strictly supervise incommunicado detention to prevent ill-treatment.

13. Peru's implementation of a general amnesty law for human rights violations associated with the armed conflict is a direct violation of article 2. In its Final Observations on the Government's report, the Committee deplored Peru's failure to repeal its amnesty law, provide compensation to victims, and remove violators from government service, as the Committee had recommended in its Preliminary Observations.

14. Human Rights Watch urges the Commission to request permission for the Special Rapporteur on the question of torture to visit Peru once again. The Special Rapporteur produced special reports on Peru in 1994 and in 1996.

15. Human Rights Watch also urges that an invitation be extended to the Working Group on Arbitrary Detention to visit Peru. In 1996, President Alberto Fujimori acknowledged that the faceless courts had produced some injustices, and the Congress established an ad hoc commission to review cases and recommend individuals who should receive presidential pardons. A visit by the Working Group could provide support for the work of the ad hoc commission and the Working Group could advise the Government on further steps needed to avoid arbitrary detentions and to compensate victims.

16. Because of the systematic nature of Peru's breaches of its international obligations, which have been deplored by the Human Rights Committee and the Special Rapporteur on the question of torture, and because the Government has acknowledged that injustices have been created by the faceless court system, Human Rights Watch recommends that the Commission on Human Rights appoint an independent expert to advise Peru on bringing its justice system into compliance with international standards, and to issue a public report on Peru's progress.